IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 1247 of 2005(W)

OS.1950/1998 of PRL.M.C.,IRINJALAKUDA
.....

PETITIONER:

ANTONY, AGED 56 YEARS,
S/O. ARAKKAL PUYUSH, IRINJALAKUDA, THRISSUR DIST.

BY ADV. SRI.V.A.PRADEEP KUMAR
SRI.T.N.NALAN

RESPONDENTS:
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1. KAKKATTU SIVA KURIES PVT. LTD.,
MAPRANAM DESOM, MADAYIL KONAM VILLAGE,
MUKUNDAPURAM TALUK, REPRESENTED BY ITS CHAIRMAN.

2. MURALEEDHARAN, S/O. KUMARAN,
AMBALAKATTU HOUSE, MULLEKKATTU DESOM,
IRINJALAKUDA.

3. MRS.ROSSELY, W/O. ANTONY,
ARAKKAL HOUSE, IRINJALAKKUDA.

R1 BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 1247/2005 W

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE OBJECTION FILED BY THE PETITIONER IN EP NO. 2051/2000 IN OS NO. 1950/98 DT. 16/12/04.

EXT.P2. COPY OF THE PETITION IN EA NO. 2018/2004 IN EP NO. 2051/00 DT. 16/12/2004 BY THE PETITIONER.

RESPONDENT'S EXHIBITS

NIL

True copy

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PIUS C. KURIAKOSE, J.

W.P.(C) No. 1247 OF 2005

Dated this the 22nd day of June, 2007

JUDGMENT

No representation for the petitioner. Heard counsel for the respondent. The grievance of the petitioner is that the court below has passed an order of arrest without considering the objections, (Ext.P1) filed by him in response to notice under Order XXI Rule 37. Significantly, copy of the order directing the petitioner's arrest is not produced before this Court. Learned counsel for the respondent submits that the petitioners did not file Exts.P1 and P2 though several opportunities were given and Ext.P1 was actually filed only after the order of warrant was issued against him. It is almost clear that the order of arrest was not preceded by an enquiry under Rule 40 of Order XXI. Under these circumstances, I am inclined to direct the court below to enquire into Ext.P1 objections if the petitioner has filed the same on 16.12.04 as the petitioner claims before this court, but only on conditions. In the result, the writ petition will stand disposed of issuing the following directions:

The petitioner is directed to pay a sum of Rs.10,000/- towards the claims in the execution petition to the 1st respondent either directly or through the 1st respondent's counsel in the court below or at this court

within one month from today. If the court below notices receipt against such payment, the court below will further verify whether on 16.12.04 the original of Ext.P1 objections have been filed by the petitioner before that court. If it is seen that the original of Ext.P1 was actually filed, then the court below will enquire into Ext.P1 affording opportunity to both sides to prove their rival claims regarding the petitioner's means and pass fresh orders. It is made clear the petitioner will get the benefit of this judgment only if he complies with the direction for payment and he has actually filed Ext.P1 on 16.12.04.

PIUS C. KURIAKOSE, JUDGE

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